

Tuesday September 20, 2011

The Board met at its offices at 450 N Street, Sacramento, at 10:27 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Pacific Bell Telephone Company and Affiliates, 521312

2001, \$52,144,001.00 Assessment

2002, \$14,639,261.00 Assessment

For Appellant:

John Stephens, Witness

Ligia Machado, Representative

Derick Brannan, Attorney

Jon Sperring, Attorney

For Franchise Tax Board:

Kathleen Andleman, Tax Counsel

Carl Joseph, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether income from appellant's foreign investments constitutes business income.

Whether it is appropriate to exclude from appellant's gross receipts, and appellant's sales factor denominator, amounts received from transactions conducted by its treasury department, pursuant to Revenue and Taxation Code section 25137.

Grant Thompson, Tax Counsel, Legal Appeals Division, Legal Department, stated for the record that the parties agreed to some concessions in letters dated September 1 and September 6 as to the second issue.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 9.1](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 9.2](#))

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 1:10 p.m. and reconvened at 2:01 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC HEARINGS**Business Taxpayers' Bill of Rights Hearings**

Todd Gilman, Taxpayer Rights Advocate, Taxpayers' Rights Advocate Office made introductory remarks regarding the opportunity for individuals to present ideas, concerns, and recommendations regarding the legislation, the quality of agency services, and issues related to the administration of tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([Exhibit 9.3](#)).

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Speakers: Jesse W. McClellan, Partner, McClellan Davis LLC, Associated Sales Tax Consultants
Joseph Griesa, Office Manager, Yuba-Sutter Telephone
Dan Davis, McClellan Davis LLC, Associated Sales Tax Consultants

Pending receipt of a written submission from speaker Jesse McClellan detailing his suggestion to improve and clarify the BOE's audit procedures by including a preponderance of evidence standard for use in the performance of sales and use tax audits, the Board directed staff to provide its analysis of the suggestion and to determine whether any statutory changes are necessary and/or required if such a suggestion were adopted.

Mr. Runner requested staff to work with his office and Joseph Griesa regarding Yuba-Sutter Telephone Co. LLC's outstanding liability and issues with BOE to reach a resolution.

Ms. Yee requested staff to address the concerns raised regarding the need for improvement in the Offer in Compromise Program and consider the suggestions of speaker Dan Davis regarding training in financial analysis and economic business failure or the use of higher-level staff.

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Taxpayer Rights Advocate, Taxpayers' Rights Advocate Office, made introductory remarks regarding the opportunity for individuals to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and issues related to the administration of tax programs, including state and county property tax, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([see Exhibit 9.3](#)).

Speakers: Joseph C. Kelly, Calaveras County Resident ([Exhibit 9.4](#))
Kimberlee Kay, Assistant Manager, Sherman & Boone Realtors on behalf of
Omni Financial, LLC ([Exhibit 9.5](#))
Gina Rodriquez, Vice President of State Tax Policy, California Taxpayers
Association ([Exhibit 9.6](#))
Lee Martin, Alameda County Resident

Mr. Horton directed staff to work with appropriate individuals to resolve speaker Joseph C. Kelly's issues.

Mr. Runner requested staff to work with his office and speaker Kimberlee Kay, in addition to the Fresno County Assessor's office, regarding her personal property assessment issue.

Mr. Runner stated, in response to comments made by speaker Gina Rodriquez, that the embedded software exemption will be discussed at the Annual Meeting of the Board and County Assessors on October 19, 2011. In addition, the issues of change in ownership penalty applied to properties where no change in ownership has occurred; and, assessment appeals filing fees, will be considered for the Property Tax Committee agenda.

Mr. Horton directed staff to assist speaker Ms. Lee Martin in ensuring property tax payments were credited and to provide clarity of the relative law, such as Proposition 98.

Note: These minutes are not final until Board approved.

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The Board recessed at 2:54 p.m. and reconvened at 3:04 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Dawit Dagne Tekelwold and Helen Yohannes, 491568

1-1-05 to 12-31-07, \$49,873.61 Tax, \$5,127.46 Negligence Penalty

For Petitioners:

Dawit Tekelwold, Taxpayer

Yeneneh Abagiro, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments are warranted to the audited understatement of reported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Santona Enterprises, Inc., 513819

11-1-05 to 9-30-08, \$36,589.25 Tax

For Petitioner:

David Simson, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether additional adjustments are warranted to the audited understatement of taxable sales.

Whether petitioner is entitled to relief from some or all of the interest that has accrued on the audit.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Juan Manuel Gallardo, 466120*; and, *Media Management Service, Inc., 294859, 391611*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Yong Jae Lee, 571554 (ET)

February 15, 2011, \$184,042.00 Approximate Value

Action: Deny the petition for rehearing as recommended by the Appeals Division.

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Anugraha, Inc., 574583 (ET)

April 18, 2011, \$568.26 Approximate Value

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Elias Khader Habibeh, 574582 (ET)

April 19, 2011, \$232.41 Approximate Value

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Juan Manuel Gallardo, 466120 (BH)

7-1-04 to 6-30-07, \$42,842.44 Tax, \$5,912.59 Negligence Penalty

Action: The Board took no action.

Edmond A. Heinbockel and Lydia Rose Heinbockel, 354404 (UT)

9-24-04, \$20,120.00 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Media Management Service, Inc., 294859, 391611(EA)

6-1-00 to 3-31-03, \$59,617.64 Tax, \$5,961.76 Finality Penalty, \$5,888.84 Amnesty Double Finality Penalty, \$7,674.33 Amnesty Interest Penalty

Action: The Board took no action.

Parminder Kaur Walia and Surenderpal Singh Walia, 489616 (CH)

1-1-05 to 7-31-07, \$24,412.06 Tax, \$0.00 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Sylvia Gutierrez*, 551248; and, *Marsha E. Kakalia*, 404650.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

David Anthon, 525488

2006, \$1,980.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Carol A. Arevalo, 521606

2006, \$432.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Arizona Colorado Enterprises, LLC, 534951

2004, \$11,790.00 Claim for Refund

2003, \$11,790.00 Claim for Refund

2002, \$11,790.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Brian David Black and Carol A. Black, 529472

2006, \$1,096.06 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Aimee Canepa and John Canepa, 536737

2005, \$2,884.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jian Chen, 523094

2005, \$1,558.60 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jennifer Churchill, 530724

2005, \$1,026.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Billy J. Earnest and Glenda I. Earnest, 536959

2006, \$5,290.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Elise T. Esquivel, 518199

2006, \$1,417.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jonathan Garner, 528743

2006, \$1,120.00 Assessment

Action: Modify the action as conceded by the Franchise Tax Board to revise the additional tax due amount from \$1,120.00 to \$822.00.

Sylvia Gutierrez, 551248

2009, \$375.00 Claim for Refund

Action: The Board took no action.

Marsha E. Kakalia, 404650

2003, \$6,083.00 Tax, \$1,520.75 Failure to Provide Information Penalty

Action: The Board took no action.

Xin-Zhong Lu, 511280

2007, \$1,526.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Fred McClintock and Janice McClintock, 535144

1999, \$410.50 Late Filing Penalty, \$389.89 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

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R.J. Milano and Jean M. Milano, 533938

2008, \$2,331.96 Request for Abatement of Unpaid Interest

Action: Sustain the action of the Franchise Tax Board.

Claire A. Monfort, 527268

2006, \$894.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ki T. Myong, 536316

2005, \$462,313.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Eric Paul, 531598

2007, \$454.00 Tax, \$113.50 Late Filing Penalty, \$113.50 Demand Penalty, \$119.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Anne Powers, 527760

2006, \$763.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Micaela Ramosmares, 524435

2007, \$465.00 Claim for Refund

2008, \$480.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gary Rowe, 523698

2005, \$418.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Paul Schnell and Joanne Schnell, 528672

2005, \$7,757.00 Tax

Action: Modify the action to reflect its concession that the correct amount of appellants' additional tax for 2005 should be \$7,518.00 rather than \$7, 757.00.

William A. Shields and Juanita Gonzales Shields, 414324

2002, \$17,012.00 Assessment, \$779.72 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Adrianne B. Silver and Joel D. Silver, 528579

2005, \$1,157.00 Tax

Action: Sustain the action of the Franchise Tax Board as modified on appeal.

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Adalberto Valadez, 561822

2006, \$855.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Loyd Wimberly, 551298

1998, \$3,864.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Joseph Zhou, 508878

2004, \$353.00 Tax, \$70.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Sam Zhou, 524407

2007, \$1,720.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Roger W. Knipp and Soledad E. Knipp, 473256

2006, \$14,240.00 Tax, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing and sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTY
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalty and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Mr. Horton not participating in *Sony Pictures Entertainment, Inc., 560604*; the Board made the following orders:

Hill Phoenix, Inc., 390468 (OH)

10-1-03 to 9-30-04, \$444,990.24

Action: Approve the redetermination as recommended by staff.

Hill Phoenix, Inc., 425178 (OH)

10-1-04 to 9-30-06, \$130,047.64

Action: Approve the redetermination as recommended by staff.

Sony Pictures Entertainment, Inc., 560604 (OH)

1-1-04 to 12-31-07, \$205,110.79

Action: Approve the redetermination as recommended by staff. Mr. Horton not participating.

F. Rodgers Insulation, Inc., 509880 (EH)

1-1-04 to 12-31-07, \$98,331.69

Action: Approve the redetermination as recommended by staff.

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Passion USA, Inc., 538308 (AA)

7-1-06 to 6-30-09, \$117,786.68

Action: Approve the redetermination as recommended by staff.

Blockbuster, Inc., 573959 (OH)

5-1-10 to 6-15-10, \$115,322.75

Action: Approve relief of penalty as recommended by staff.

Valero Refining Co.-California, 261644 (OH)

1-1-01 to 6-30-03, \$644,818.56

Action: Approve the denial of claim for refund as recommended by staff.

Capital Power Credit Union, 340154 (KH)

7-1-05 to 9-30-07, \$107,812.00

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Bed Bath & Beyond of California*, 526566; the Board made the following orders:

Bed Bath & Beyond of California, 526566 (OH)

4-1-04 to 3-31-07, \$771,362.97

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Scholastic, Inc., 528208 (OH)

1-1-05 to 3-31-08, \$672,593.33

Action: Approve the credit and cancellation as recommended by staff.

Thrifty Payless, Inc., 575090 (OH)

9-25-05 to 12-27-08, \$195,303.00

Action: Approve the credit and cancellation as recommended by staff.

Hansen & Hundebol, Inc., 558364 (OH)

4-1-00 to 3-31-08, \$548,026.40

Action: Approve the credit and cancellation as recommended by staff.

CNCP, Inc., 578837 (EA)

1-1-05 to 12-20-07, \$821,019.32

Action: Approve the credit and cancellation as recommended by staff.

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Lawrence Berkeley Laboratory, 573022 (CH)

10-1-09 to 12-31-09, \$148,750.01

Action: Approve the refund as recommended by staff.

Pizza Hut, Inc., 553646 (OH)

7-8-08 to 9-28-09, \$435,977.15

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 565980 (KH)

10-1-10 to 3-31-11, \$333,066.00

Action: Approve the refund as recommended by staff.

Chrysler, LLC, 574579 (OH)

4-16-10 to 5-18-11, \$654,534.46

Action: Approve the refund as recommended by staff.

DCFS Trust, 523038 (OH)

10-1-05 to 12-31-08, \$481,909.16

Action: Approve the refund as recommended by staff.

Signature Graphics, Inc., 531482 (OH)

1-1-07 to 6-30-09, \$146,776.94

Action: Approve the refund as recommended by staff.

Metropolitan Finance, LLC, 565981 (AP)

10-1-10 to 3-31-11, \$208,443.00

Action: Approve the refund as recommended by staff.

G & C Equipment Corporation, 572188 (AS)

4-1-05 to 3-31-08, \$470,661.51

Action: Approve the refund as recommended by staff.

Macess Corporation, 551286 (OH)

1-1-09 to 3-31-10, \$138,584.00

Action: Approve the refund as recommended by staff.

Calmat Co., 558559 (AA)

7-1-09 to 9-30-09, \$178,294.71

Action: Approve the refund as recommended by staff.

Unilab Corporation, 504875 (OH)

4-1-06 to 12-31-07, \$113,676.77

Action: Approve the refund as recommended by staff.

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Tanimura & Antle, Inc., 572671 (GH)

7-1-07 to 6-30-10, \$114,644.65

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 566550 (OH)

10-1-10 to 3-31-11, \$1,083,632.00

Action: Approve the refund as recommended by staff.

The Trizetto Group, Inc., 572661 (EA)

1-1-08 to 12-31-08, \$341,877.53

Action: Approve the refund as recommended by staff.

Gateway Manufacturing, LLC, 566241 (OH)

4-1-04 to 12-31-07, \$245,280.93

Action: Approve the refund as recommended by staff.

WMC-SA, Inc., 535426 (EA)

4-1-07 to 6-30-10, \$416,879.24

Action: Approve the refund as recommended by staff.

Operating Engineers Local Union #3, 515696 (CH)

7-1-06 to 6-30-10, \$183,713.06

Action: Approve the refund as recommended by staff.

Chevron Mining, Inc., 518568 (OH)

7-1-08 to 9-30-08, \$117,675.96

Action: Approve the refund as recommended by staff.

Mission Federal Credit Union, 445749 (FH)

1-1-05 to 6-30-08, \$637,077.28

Action: Approve the refund as recommended by staff.

Fusion-io, Inc., 554769 (OH)

7-1-10 to 9-30-10, \$175,096.00

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTY, CONSENT

With respect to the Special Taxes Matters, Relief of Penalty, Consent Agenda, upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following order:

Pacific Groservice, Inc., 576784 (ET)

2-17-11 to 2-25-11, \$148,540.59

Action: Approve the relief of penalty as recommended by staff.

Note: These minutes are not final until Board approved.

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PROPERTY TAXES MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petitions for Penalty Abatement on Unitary Value

Terra-Gen Dixie Valley, LLC (125), 574407

2011, \$398,000.00 Penalty

Action: Approve the penalty abatement on 2011 unitary value as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Lodi Gas Storage, LLC (198), 575406

2011, \$20,000,000.00 Penalty

Action: Approve the penalty abatement on 2011 unitary value as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Reassessment of Unitary Value

Sierra Pacific Power Company (146), 576078

2011, \$85,900,000.00 Unitary Value

Action: Reduce the 2011 unitary value to \$84,500,000.00 as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Southwest Gas Corporation (152), 575401

2011, \$207,400,000.00 Unitary Value

Action: Reduce the 2011 unitary value to \$206,100,000.00 as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

CALNEV Pipe Line, LLC (402), 577337

2011, \$82,600,000.00 Unitary Value

Action: Reduce the 2011 unitary value to \$80,000,000.00 as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTER, ADJUDICATORY

Victor S. Baglio, Jr., 473489 (UT)

9-22-07, \$17,632.00 Tax

Considered by the Board: July 27, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be denied.

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TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTER****Audits**

Pac-West Telecomm, Inc. (2043)

2008, \$1,370,000.00 Excessive Assessment

2009, \$4,800,000.00 Excessive Assessment

2010, \$7,700,000.00 Excessive Assessment

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit excessive assessment as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Manuel Ricardo Amaya*; *Raymond Baskett*; *James H. Bess*; and, *Walter Standly Franklin*; as recommended by staff.

CHIEF COUNSEL MATTERS**PROPERTY TAX****Welfare Exemption for Nonprofits**

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding welfare exemption community benefit requirement for nonprofit organizations that perform charitable activities both within and outside California ([Exhibit 9.7](#)).

Speaker: Gregory R. Broege, Attorney, Ajalat, Polley, Ayoob & Matarese

Ms. Yee requested staff to issue revised guidance removing the word “Primarily” from the definition and description of the Community Benefit Test.

Ms. Yee requested staff to report to the Board on the feasibility of amending the *Rules for Tax Appeals* to include a provision that would allow the filing of petitions for rehearing of denials of Organizational Clearance Certificates, in Property Tax Welfare and Veteran’s Organization Exemption claims. The matter is to be calendared for discussion at a later meeting.

Tuesday September 20, 2011

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD SEPTEMBER 20, 2011**

Pacific Bell Telephone Company and Affiliates, 521312

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board as to the money market mutual fund issue. The motion was seconded by Ms. Steel. Ms. Steel withdrew her second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board, subject to concessions of the parties, as to the money market mutual fund issue.

Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board as to the nonbusiness income issue.

Ms. Yee requested staff to take care in the future to more fully develop and synthesize relevant cases and legal authorities in appeals where there is a big reliance on case law.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Jerry Jones, 547938

2006, \$558.00 Assessment

For Appellant:

For Franchise Tax Board:

Appearance Waived

Brian Miller, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether the proposed assessment is barred by the statute of limitations.

Whether appellant has demonstrated error in the underlying tax assessment.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 20, 2011**

Dawit Dagne Tekelwold and Helen Yohannes, 491568

Final Action: Ms. Steel moved that the negligence penalty be abated, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the markup be reduced to 35 percent, that the taxable purchase ratio be reduced to 89 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division.

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Santona Enterprises, Inc., 513819

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:48 p.m.

The foregoing minutes are adopted by the Board on December 15, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Diane Green, 539627; Educational Outreach Events and Partnerships; and, Statements of Economic Interest (FPPC Form 700s) and Travel Claim Schedules.*

Wednesday, September 21, 2011

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Outlook United, 469679 (BH)

7-1-04 to 6-30-07, \$35,585.69 Tax

For Petitioner:

Gene Chi, Taxpayer

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Cherie Rose, Incorporated, 466880 (GH)

7-1-03 to 6-30-06, \$92,190.13 Tax, \$9,218.99 Negligence Penalty

For Petitioner:

Cherie Rose, Taxpayer

Carleen Clarke, Representative

Matt Wheeler, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that it is entitled to further reductions in the measure of tax.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 10:58 a.m. and reconvened at 11:04 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

S.J. Toons, Inc., 493139 (GH)

4-1-05 to 3-31-08, \$73,633.46 Tax, \$7,750.88 Negligence Penalty

For Petitioner:

Norman Koepernik, Taxpayer

Dann Thompson, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported sales.

Whether petitioner was negligent.

David Levine, Tax Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to use a pour of two ounces for 15 percent of the drinks and to remove the negligence penalty.

Note: These minutes are not final until Board approved.

Wednesday, September 21, 2011

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Family Leisure Products, Inc., 491614 (OH)

7-1-08 to 3-31-09, \$26,483.00 Tax, \$2,648.30 Failure-to-File Returns Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether adjustments are warranted to the asserted liability.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jacob Zachariah, 437728 (JH)

1-1-00 to 6-30-07, \$163,188.35 Tax, \$40,797.14 Fraud Penalty, \$16,049.21 Amnesty Double Fraud Penalty, \$9,957.22 Amnesty Interest Penalty

For Petitioner: Jacob Zachariah, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the deficiency.

Whether the department has established fraud or intent to evade sales and use tax by clear and convincing evidence.

Whether the Notice of Determination (determination) was issued timely for the period January 1, 2000, through June 30, 2003.

Whether the amnesty penalties should be relieved.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

SPECIAL TAXES APPEALS HEARING

Atik Aman and Rangina Aman, 468086 (MT)

2-10-05 to 9-30-07, \$57,051.60 Claim for Refund, \$5,705.17 Late Payment Penalties

For Claimants: Atik Aman, Taxpayer

Rangina Aman, Taxpayer

Aemal Aman, Representative

For Property and Special Taxes Department: Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimants overpaid the fees at issue.

Whether relief of the late-payment penalties is warranted.

Whether relief of interest is warranted.

Wednesday, September 21, 2011

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

The Board recessed at 12:22 p.m. and reconvened at 1:30 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolution, extending its sincere and grateful appreciation to the retiree for her dedicated service to the State Board of Equalization and to the State of California, their congratulations on the retiree's well-earned retirement, and best wishes to her and her family for continued success, happiness and good health in the years to come ([Exhibit 9.8](#)).

Carole Melton, Business Taxes Compliance Supervisor II, Motor Carrier Office,
Property and Special Taxes Department, Headquarters

Action: Approve the Board Meeting Minutes of June 21-24, 2011 and July 26-27, 2011.

Action: Approve the correction to Board Meeting Minutes of April 13, 2010 as recommended by staff ([Exhibit 9.9](#)).

Action: Approve the 2012 Board Workload Plan, which includes annual property tax calendars for the valuation of public utilities and railroads and the assessment and collection of private railroad car tax, as recommended by staff ([Exhibit 9.10](#)).

Action: Adopt the diesel fuel tax rate for interstate users component b of \$0.305 per gallon for calendar year 2012 as recommended by staff ([Exhibit 9.11](#)).

Action: Adopt the Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention fee for calendar year 2012 as recommended by staff ([Exhibit 9.12](#)).

Action: Approve the prepayment rates for sales tax on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff ([Exhibit 9.13](#)).

Exhibits to these minutes are incorporated by reference.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Business Taxes Committee

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 9.14](#)).

Note: These minutes are not final until Board approved.

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OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, provided a report regarding progress on the CROS project to replace BOE's two current tax legacy technology systems ([Exhibit 9.15](#)).

Ms. Yee requested staff to disseminate the planning and procurement training information that is provided to the CROS core team and interested parties, and include the code of conduct of this procurement, to Board Members' offices and executive staff.

Ms. Mandel requested staff to make the training available to all BOE employees, including refresher training, and would like to be informed of any in-person component if available.

Mr. Horton directed staff to make transitional training available to current BOE employees early enough to allow them to be competitive in the hiring process for any new CROS positions.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided a Headquarters facilities update, which included a discussion by the Department of General Services and BOE's Industrial Hygienist regarding recent discoveries in the building and the proposed plan.

Speakers: Nik Karlsson, Chief, Project Manager Branch, Department of General Services
Ted Park, Deputy Director, Real Estate Services, Department of General Services
Steven Davis, Principal, LaCroix Davis, Technical Expert on behalf of
Department of General Services
Brian Daly, Hygiene Technician, Hygiene Technologies International, Inc.,
Technical Expert on behalf of BOE
Steven K. Alari, President, SEIU Local 1000, District Labor Council 782

Ms. Yee requested staff to take a holistic and proactive approach, provide a list for the November Board meeting that identifies systems that still need to be examined for possible future issues, and report why those have not been done.

Ms. Yee requested staff to hold employee town hall discussions on the matter, with participation of the Department of General Services, within two weeks and inform Board Members' offices of those discussions.

Ms. Steel requested staff to report the costs to date, and estimate future costs of the problems with the building.

Wednesday, September 21, 2011

Mr. Runner requested staff to invite the new Director of the Department of General Services to the November Board meeting to revisit the policy of encapsulating mold, monitoring and future remediation of the mold in the HVAC system, any future issues that may arise, report on possible building design issues and being more proactive rather than reactive to the safety of the employees.

Mr. Horton requested Mr. Davis and Mr. Daly collaborate on an extensive examination of the building and report what they believe to be the genesis of the problems and the specific actions that can be taken to address the problems rather than the symptoms.

Liz Houser, Deputy Director, Administration Department, provided a facilities update on the pending bond sale for possible rent increase for the Headquarters building located at 450 N Street.

Liz Houser, Deputy Director, Administration Department, provided a facilities update on the lease for the San Diego District Office. Ms. Houser introduced Andres Estrada, District Administrator, San Diego District Office, Field Operations Division, Sales and Use Tax Department, who provided additional information about the facility, including services and amenities in the area and staff responses ([Exhibit 9.16](#)).

Liz Houser, Deputy Director, Administration Department, provided an update on the Governor's 2011/12 Budget and Governor's Executive Orders.

Liz Houser, Deputy Director, Administration Department, provided a high level overview of the 2012/13 DRAFT Budget Change Proposals (BCPs) ([Exhibit 9.17](#)).

Ms. Houser introduced BCP *ABx1 28 Use Tax Nexus*, which requests resources to implement the provisions of ABx1 28 in the event that current year funding is not provided for these efforts ([Exhibit 9.18](#)).

Action: The Board deferred consideration of *BCP ABx1 28 Use Tax Nexus* to a later date.

Ms. Houser introduced BCP *ABx1 29 Fire Prevention Fee*, which requests resources to implement the provisions of ABx1 29 in the event that current year funding is not provided for these efforts ([Exhibit 9.19](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board approved the BCP *ABx1 29 Fire Prevention Fee*, as recommended by staff.

Ms. Houser introduced BCP *Tax Gap 2*, which requests resources for education and outreach, a desk audit program, and an expanded bankruptcy program to address the tax gap ([Exhibit 9.20](#)).

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Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Use Tax Educational Outreach Campaign and the Bankruptcy Expansion components of the BCP *Tax Gap 2*, as recommended by staff.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board approved the Desk Audit Program component of the BCP *Tax Gap 2*, as recommended by staff.

External Affairs Deputy Director's Report

Anita Gore, Deputy Director, External Affairs Department, presented a potential statewide survey/poll on the topic of Use Tax and suggested revisions ([Exhibit 9.21](#)).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the statewide survey/poll with the following amendment: text in question 16 is changed from "a new law enacted in June" to "There has been much discussion about requiring out-of-state retailers who meet certain conditions to collect the use tax."

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD SEPTEMBER 21, 2011

Outlook United, 469679 (BH)

Final Action: Mr. Runner moved that the markup be reduced from 18 percent to 15 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

Mr. Horton moved to make an adjustment of 10 percent for obsolescence. The motion failed for lack of a second.

Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the audited taxable sales be reduce by 5 percent to reflect sales of obsolete phones, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Ms. Yee requested staff to assist the taxpayer with an understanding of how the law applies to this case.

Cherie Rose, Incorporated, 466880 (GH)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be returned to the Department for a reaudit based upon additional documents provided by the taxpayer.

S.J. Toons, Inc., 493139 (GH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

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Wednesday, September 21, 2011

Family Leisure Products, Inc., 491614 (OH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Jacob Zachariah, 437728 (JH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD
SEPTEMBER 21, 2011**

Atik Aman and Rangina Aman, 468086 (MT)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee voting no, Ms. Mandel abstaining, the Board ordered that interest be relieved for the period July 1, 2005 to August 31, 2007, and that the claim otherwise be denied as recommended by the Appeals Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:58 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 5:27 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Liz Houser, Deputy Director, Administration Department, announced the following appointments that were made in closed session: Kristine Cazadd to the position of Executive Director, beginning October 1, 2011 for a period of six months but not to exceed March 31, 2012, to allow adequate advertisement of the position; Brenda Fleming to the position of Chief Information Officer; Amy Tong to the position of Chief Technology Officer; and, Eric Steen to the position of CROS Project Director.

The Board adjourned at 5:29 p.m.

The foregoing minutes are adopted by the Board on December 15, 2011.

Note: These minutes are not final until Board approved.